



March 25, 2005

ENGROSSED SENATE BILL No. 508

DIGEST OF SB 508 (Updated March 24, 2005 10:33 am - DI 96)

Citations Affected: IC 5-16; IC 22-2; IC 22-3; IC 22-5; noncode.

Synopsis: Public works and employment. Exempts from worker's compensation and occupational disease law: (1) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code to the extent the corporation enters into an independent contractor agreement for the performance of youth coaching services on a part-time basis; and (2) the coaches with whom the corporation enters into the agreement. Requires an employer to make payment to an employee, by semimonthly or biweekly payment, for all wages earned to a date not more than ten business days prior to the date of payment. Specifies that if an employee has left employment voluntarily and the employer does not know the whereabouts or address of the employee, that the employer is not subject to payment of liquidated damages for the failure to pay wages timely until: (1) ten business days have elapsed after the employee has made a demand for the wages; or (2) the employee has given the employer the employee's address. (Current law: (1) requires payment to be made for wages earned to a date not more than ten days prior to the date of payment; and (2)

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Effective: July 1, 2005.

Clark

(HOUSE SPONSOR — TORR)

January 18, 2005, read first time and referred to Committee on Pensions and Labor.
February 10, 2005, reported favorably — Do Pass.
February 22, 2005, read second time, amended, ordered engrossed.
February 23, 2005, engrossed.
February 28, 2005, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Employment and Labor.
March 24, 2005, amended, reported — Do Pass.

ES 508—LS 7882/DI 102+



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provides that in the event that the employee's whereabouts are unknown, the employer is not subject to payment of liquidated damages until ten days have elapsed after the employee has made a demand for the wages due.) Permits a wage assignment for payment for: (1) uniforms; and (2) tools and portable equipment. Increases to \$3,000 the amount of the maximum wage claim for which the commissioner of the department of labor may take an assignment. Repeals and relocates language making it a Class C infraction for an employer to sell merchandise or supplies to an employee for a price higher than to the public. Repeals chapter concerning the regulation of wage payments, which includes the following provisions: (1) a provision requiring an employer to pay employees in commercial paper; (2) a duplicate provision concerning frequency of wage payments; and (3) a provision containing outdated language concerning liens of laborers. Requires that notice of a meeting of a committee to determine the common construction wage must meet requirements for public notice and be published on the Internet. Provides that the common construction wage does not apply to public works projects in which the actual construction costs less than \$250,000. Increases the worker's compensation burial expense allowance to \$7,500. Makes technical corrections.

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March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 508

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Any firm, individual,
3 partnership, limited liability company, or corporation that is awarded
4 a contract by the state, a political subdivision, or a municipal
5 corporation for the construction of a public work, and any
6 subcontractor of the construction, shall pay for each class of work
7 described in subsection (c)(1) on the project a scale of wages that may
8 not be less than the common construction wage.
9 (b) For the purpose of ascertaining what the common construction
10 wage is in the county, the awarding governmental agency, before
11 advertising for the contract, shall set up a committee of five (5) persons
12 as follows:
13 (1) One (1) person representing labor, to be named by the
14 president of the state federation of labor.
15 (2) One (1) person representing industry, to be named by the
16 awarding agency.
17 (3) A third member to be named by the governor.

ES 508—LS 7882/DI 102+



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(4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and determine in writing the following:

(1) A classification of the labor to be employed in the performance of the contract for the project, divided into the following three (3) classes:

(A) Skilled labor.

(B) Semiskilled labor.

(C) Unskilled labor.

(2) The wage per hour to be paid each of the classes.

The committee is not required to consider information not presented to the committee at the meeting. IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) Notice of the committee's meeting shall be published:

(1) as required by IC 5-3-1; and

(2) on the Internet through the computer gateway administered by the intelnet commission under IC 5-21-2.

The notice given under subdivision (2) must be published not later than forty-eight (48) hours before the meeting. A determination made at a meeting held in violation of this subsection is void.

~~(d)~~ (e) The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the three (3) classes of wages described in subsection (c) that are currently being paid in the county where the project is located.

~~(e)~~ The provisions of (f) This chapter ~~shall~~ **does** not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. IC 8-23-9 applies to state highway projects.

~~(f)~~ (g) A determination under subsection (c) shall be made and filed with the awarding agency at least two (2) weeks ~~prior to~~ **before** the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

~~(g)~~ (h) If the committee appointed under subsection (b) fails to act

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and to file a determination under subsection (c) ~~at or before the time required under by the deadline set forth in~~ subsection ~~(f)~~, (g), the awarding agency shall make the determination, and its finding shall be final.

~~(h)~~ (i) It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with the determination made under this section.

~~(i)~~ ~~The provisions of (j)~~ This chapter ~~do~~ **does** not apply to public projects in this state **Indiana** that would otherwise be subject to ~~the provisions of~~ this chapter that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant ~~shall consent~~ **consents** in writing that ~~the provisions of this chapter are~~ **is** applicable to the project.

~~(j)~~ (k) Notwithstanding any other law, ~~the provisions of this chapter apply~~ **applies** to projects that will be:

(1) owned entirely; or

(2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

~~(k)~~ (l) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs less than ~~one two~~ hundred fifty thousand dollars ~~(\$150,000)~~: **(\$250,000)**.

SECTION 2. IC 22-2-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. Any contract in violation of this subsection is void.

(b) Payment shall be made for all wages earned to a date not more than ten (10) **business** days prior to the date of payment. ~~However,~~ This subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeal any law providing for payments at shorter intervals. ~~However,~~ If an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:



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- (1) ten (10) **business** days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

SECTION 3. IC 22-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

- (1) The assignment is:
 - (A) in writing;
 - (B) signed by the employee personally;
 - (C) by its terms revocable at any time by the employee upon written notice to the employer; and
 - (D) agreed to in writing by the employer.
- (2) An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.
- (3) The assignment is made for a purpose described in subsection (b).

(b) A wage assignment under this section may be made for the purpose of paying any of the following:

- (1) Premium on a policy of insurance obtained for the employee by the employer.
- (2) Pledge or contribution of the employee to a charitable or nonprofit organization.
- (3) Purchase price of bonds or securities, issued or guaranteed by the United States.
- (4) Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been made.
- (5) Dues to become owing by the employee to a labor organization of which the employee is a member.
- (6) Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.
- (7) Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee

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subject to the amount limits set forth in section 4(c) of this chapter.

(8) Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.

(9) Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.

(10) Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.

(11) Premiums on policies of insurance and annuities purchased by the employee on the employee's life.

(12) The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.

(13) A judgment owed by the employee if the payment:

(A) is made in accordance with an agreement between the employee and the creditor; and

(B) is not a garnishment under IC 34-25-3.

(14) Payment for the purchase or maintenance of uniforms worn by the employee while performing duties for the employer.

(15) Payment for the purchase of tools and portable equipment used by the employee while performing duties for the employer.

SECTION 4. IC 22-2-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The commissioner of labor is hereby authorized to take assignments of wage claims of less than ~~eight hundred dollars (\$800.00)~~, **three thousand dollars (\$3,000)**, rights of action for penalties, mechanics and other liens of workers, without being bound by any of the technical rules with reference to the validity of such assignments; and shall have power and authority to prosecute actions for the collection of such claims of persons who, in the judgment of the commissioner:

(1) are entitled to the services of the commissioner; and ~~who, in his judgment,~~

(2) have claims which are valid and enforceable in the court.

(b) The commissioner shall have power to join various claimants in one (1) preferred claim or lien, and, in case of suit, to join them in one

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(1) cause of action.

SECTION 5. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby.

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

- (1) engineers;
- (2) firemen;
- (3) conductors;
- (4) brakemen;
- (5) flagmen;
- (6) baggagemen; or
- (7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) IC 22-3-2 through IC 22-3-6 do not apply to the following:

- (1) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.**
- (2) A nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time**

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1 **basis.**

2 ~~(d)~~ **(e)** When any municipal corporation purchases or procures
3 worker's compensation insurance covering members of the fire
4 department or police department who are also members of a
5 firefighters' pension fund or a police officers' pension fund, and pays
6 the premium or premiums for such insurance, the payment of such
7 premiums is a legal and allowable expenditure of funds of any
8 municipal corporation.

9 ~~(e)~~ **(f)** Except as provided in ~~subsection (f)~~, **subsection (g)**, where
10 the common council has procured worker's compensation insurance
11 under this section, any member of such fire department or police
12 department employed in the city carrying such worker's compensation
13 insurance under this section is limited to recovery of medical and
14 surgical care, medicines, laboratory, curative and palliative agents and
15 means, x-ray, diagnostic and therapeutic services to the extent that such
16 services are provided for in the worker's compensation policy procured
17 by such city, and shall not also recover in addition to that policy for
18 such same benefits provided in IC 36-8-4.

19 ~~(f)~~ **(g)** If the medical benefits provided under a worker's
20 compensation policy procured by the common council terminate for
21 any reason before the police officer or firefighter is fully recovered, the
22 common council shall provide medical benefits that are necessary until
23 the police officer or firefighter is no longer in need of medical care.

24 ~~(g)~~ **(h)** The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- 25 (1) members of the Indiana general assembly; and
26 (2) field examiners of the state board of accounts.

27 **SECTION 6. IC 22-3-2-9 IS AMENDED TO READ AS FOLLOWS**
28 **[EFFECTIVE JULY 1, 2005]: Sec. 9. (a) IC 22-3-2 through IC 22-3-6**
29 **shall not apply to:**

- 30 **(1) casual laborers (as defined in IC 22-3-6-1); ~~not to~~**
31 **(2) farm or agricultural employees; ~~not to~~**
32 **(3) household employees; ~~not to or~~**
33 **(4) a person who enters into an independent contractor**
34 **agreement with a nonprofit corporation that is recognized as**
35 **tax exempt under Section 501(c)(3) of the Internal Revenue**
36 **Code (as defined in IC 6-3-1-11(a)) to perform youth coaching**
37 **services on a part-time basis.**

38 **IC 22-3-2 through IC 22-3-6 do not apply to the employers or**
39 **contractors of ~~such~~ the persons listed in this subsection.**

40 (b) An employer who is exempt under this section from the
41 operation of the compensation provisions of this chapter may at any
42 time waive such exemption and thereby accept the provisions of this

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chapter by giving notice as provided in subsection (c).

(c) The notice of acceptance referred to in subsection (b) shall be given thirty (30) days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty (30) days after the date of employment, notice of acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the worker's compensation board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room, or place where the employee is employed, or by serving it personally upon ~~him~~; **the employee**; and shall be given by the employee by sending the same in registered letter addressed to the employer at ~~his~~ **the employer's** last known residence or place of business, or by giving it personally to the employer, or any of ~~his~~ **the employer's** agents upon whom a summons in civil actions may be served under the laws of the state.

(d) A copy of the notice in prescribed form shall also be filed with the worker's compensation board, within five (5) days after its service in such manner upon the employee or employer.

SECTION 7. IC 22-3-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) As used in this section, "person" does not include:

(1) an owner who contracts for performance of work on the owner's owner occupied residential property; or

(2) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, or person, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value by a contractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without exacting from such contractor a certificate from the worker's compensation board showing that such contractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

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(c) Any contractor who shall sublet any contract for the performance of any work, to a subcontractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the worker's compensation board showing that such subcontractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as such subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

(d) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, person, or contractor paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under this section may recover the amount paid or to be paid from any person who, independently of such provisions, would have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(e) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (b), shall fix the order in which said parties shall be exhausted, beginning with the immediate employer, and, in an award under subsection (c), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 8. IC 22-3-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. In ~~all~~ cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)~~: **(\$7,500)**.

SECTION 9. IC 22-3-6-1, AS AMENDED BY HEA1288-2005, SECTION 182, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal

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representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5. **The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.**

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are

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employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor

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1 carrier is not an employee of the motor carrier for purposes of
 2 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 3 covered and have the owner-operator's drivers covered under a
 4 worker's compensation insurance policy or authorized
 5 self-insurance that insures the motor carrier if the owner-operator
 6 pays the premiums as requested by the motor carrier. An election
 7 by an owner-operator under this subdivision does not terminate
 8 the independent contractor status of the owner-operator for any
 9 purpose other than the purpose of this subdivision.

10 (9) A member or manager in a limited liability company may elect
 11 to include the member or manager as an employee under
 12 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
 13 engaged in the limited liability company business. If a member or
 14 manager makes this election, the member or manager must serve
 15 upon the member's or manager's insurance carrier and upon the
 16 board written notice of the election. A member or manager may
 17 not be considered an employee under IC 22-3-2 through IC 22-3-6
 18 until the notice has been received.

19 (10) An unpaid participant under the federal School to Work
 20 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
 21 extent set forth in IC 22-3-2-2.5.

22 **(11) A person who enters into an independent contractor**
 23 **agreement with a nonprofit corporation that is recognized as**
 24 **tax exempt under Section 501(c)(3) of the Internal Revenue**
 25 **Code (as defined in IC 6-3-1-11(a)) to perform youth coaching**
 26 **services on a part-time basis is not an employee for purposes**
 27 **of IC 22-3-2 through IC 22-3-6.**

28 (c) "Minor" means an individual who has not reached seventeen
 29 (17) years of age.

30 (1) Unless otherwise provided in this subsection, a minor
 31 employee shall be considered as being of full age for all purposes
 32 of IC 22-3-2 through IC 22-3-6.

33 (2) If the employee is a minor who, at the time of the accident, is
 34 employed, required, suffered, or permitted to work in violation of
 35 IC 20-33-3-35, the amount of compensation and death benefits,
 36 as provided in IC 22-3-2 through IC 22-3-6, shall be double the
 37 amount which would otherwise be recoverable. The insurance
 38 carrier shall be liable on its policy for one-half (1/2) of the
 39 compensation or benefits that may be payable on account of the
 40 injury or death of the minor, and the employer shall be liable for
 41 the other one-half (1/2) of the compensation or benefits. If the
 42 employee is a minor who is not less than sixteen (16) years of age

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and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-37-2-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so

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employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of ~~his~~ **the employee's** earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first

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three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 10. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby.

(b) This chapter does not apply to the following:

(1) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis.

(2) A nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

~~(b)~~ **(c)** This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or a police officers' pension fund.

However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

~~(c)~~ **(d)** When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a

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1 firefighters' pension fund or a police officers' pension fund and pays the
 2 premium or premiums for the insurance, the payment of the premiums
 3 is a legal and allowable expenditure of funds of any municipal
 4 corporation.

5 ~~(d)~~ (e) Except as provided in ~~subsection (e)~~, **subsection (f)**, where
 6 the common council has procured worker's occupational disease
 7 insurance as provided under this section, any member of the fire
 8 department or police department employed in the city carrying the
 9 worker's occupational disease insurance under this section is limited to
 10 recovery of medical and surgical care, medicines, laboratory, curative
 11 and palliative agents and means, x-ray, diagnostic and therapeutic
 12 services to the extent that the services are provided for in the worker's
 13 occupational disease policy so procured by the city, and may not also
 14 recover in addition to that policy for the same benefits provided in
 15 IC 36-8-4.

16 ~~(e)~~ (f) If the medical benefits provided under a worker's
 17 occupational disease policy procured by the common council terminate
 18 for any reason before the police officer or firefighter is fully recovered,
 19 the common council shall provide medical benefits that are necessary
 20 until the police officer or firefighter is no longer in need of medical
 21 care.

22 ~~(f)~~ (g) Nothing in this section affects the rights and liabilities of
 23 employees and employers had by them prior to April 1, 1963, under
 24 this chapter.

25 SECTION 11. IC 22-3-7-9 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) As used in this
 27 chapter, "employer" includes the state and any political subdivision,
 28 any municipal corporation within the state, any individual or the legal
 29 representative of a deceased individual, firm, association, limited
 30 liability company, or corporation or the receiver or trustee of the same,
 31 using the services of another for pay. A parent corporation and its
 32 subsidiaries shall each be considered joint employers of the
 33 corporation's, the parent's, or the subsidiaries' employees for purposes
 34 of sections 6 and 33 of this chapter. Both a lessor and a lessee of
 35 employees shall each be considered joint employers of the employees
 36 provided by the lessor to the lessee for purposes of sections 6 and 33
 37 of this chapter. The term also includes an employer that provides
 38 on-the-job training under the federal School to Work Opportunities Act
 39 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this
 40 chapter. If the employer is insured, the term includes ~~his~~ **the**
 41 **employer's** insurer so far as applicable. However, the inclusion of an
 42 employer's insurer within this definition does not allow an employer's

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insurer to avoid payment for services rendered to an employee with the approval of the employer. **The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.**

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes ~~his~~ **the employee's** legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include ~~himself~~ **the owner** as an employee under this chapter if ~~he~~ **the owner** is actually engaged in the proprietorship business. If the owner makes this election, ~~he~~ **the owner** must serve upon ~~his~~ **the owner's** insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include ~~himself~~ **the partner** as an employee under this chapter if ~~he~~ **the partner** is actually engaged in the partnership business. If a partner makes this election, ~~he~~ **the partner** must serve upon ~~his~~ **the partner's** insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

(A) they are licensed real estate agents;

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(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the

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1 employee is a minor who is not less than sixteen (16) years of age and
 2 who has not reached seventeen (17) years of age, and who at the time
 3 of the last exposure is employed, suffered, or permitted to work at any
 4 occupation which is not prohibited by law, the provisions of this
 5 subsection prescribing double the amount otherwise recoverable do not
 6 apply. The rights and remedies granted to a minor under this chapter on
 7 account of disease shall exclude all rights and remedies of the minor,
 8 his parents, his personal representatives, dependents, or next of kin at
 9 common law, statutory or otherwise, on account of any disease.

10 (d) This chapter does not apply to casual laborers as defined in
 11 subsection (b), nor to farm or agricultural employees, nor to household
 12 employees, nor to railroad employees engaged in train service as
 13 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
 14 foremen in charge of yard engines and helpers assigned thereto, nor to
 15 their employers with respect to these employees. Also, this chapter
 16 does not apply to employees or their employers with respect to
 17 employments in which the laws of the United States provide for
 18 compensation or liability for injury to the health, disability, or death by
 19 reason of diseases suffered by these employees.

20 (e) As used in this chapter, "disablement" means the event of
 21 becoming disabled from earning full wages at the work in which the
 22 employee was engaged when last exposed to the hazards of the
 23 occupational disease by the employer from whom ~~he~~ **the employee**
 24 claims compensation or equal wages in other suitable employment, and
 25 "disability" means the state of being so incapacitated.

26 (f) For the purposes of this chapter, no compensation shall be
 27 payable for or on account of any occupational diseases unless
 28 disablement, as defined in subsection (e), occurs within two (2) years
 29 after the last day of the last exposure to the hazards of the disease
 30 except for the following:

31 (1) In all cases of occupational diseases caused by the inhalation
 32 of silica dust or coal dust, no compensation shall be payable
 33 unless disablement, as defined in subsection (e), occurs within
 34 three (3) years after the last day of the last exposure to the hazards
 35 of the disease.

36 (2) In all cases of occupational disease caused by the exposure to
 37 radiation, no compensation shall be payable unless disablement,
 38 as defined in subsection (e), occurs within two (2) years from the
 39 date on which the employee had knowledge of the nature of ~~his~~
 40 **the employee's** occupational disease or, by exercise of reasonable
 41 diligence, should have known of the existence of such disease and
 42 its causal relationship to ~~his~~ **the employee's** employment.

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(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

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(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 12. IC 22-3-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. In ~~all~~ cases of the death of an employee from an occupational disease arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)~~ **(\$7,500)**.

SECTION 13. IC 22-3-7-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. (a) As used in this section, "person" does not include:

(1) an owner who contracts for performance of work on the owner's owner occupied residential property; **or**

(2) **a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time**

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(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

(c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

(e) Whenever an employer has complied with subsection (c) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by

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the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

(f)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

(f)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(g)(1) No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

(g)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(g)(3) Any provision in any such policy attempting to limit or

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1 modify the liability of the company or association insuring the same
2 shall be wholly void.

3 (g)(4) Every policy of any company or association shall be deemed
4 to include the following provisions:

5 "(A) The insurer assumes in full all the obligations to pay
6 physician's fees, nurse's charges, hospital supplies, burial
7 expenses, compensation or death benefits imposed upon or
8 accepted by the insured under this chapter.

9 (B) This policy is subject to the provisions of this chapter relative
10 to the liability of the insured to pay physician's fees, nurse's
11 charges, hospital services, hospital supplies, burial expenses,
12 compensation or death benefits to and for such employees, the
13 acceptance of such liability by the insured, the adjustment, trial
14 and adjudication of claims for such physician's fees, nurse's
15 charges, hospital services, hospital supplies, burial expenses,
16 compensation, or death benefits.

17 (C) Between this insurer and the employee, notice to or
18 knowledge of the occurrence of the disablement on the part of the
19 insured (the employer) shall be notice or knowledge thereof, on
20 the part of the insurer. The jurisdiction of the insured (the
21 employer) for the purpose of this chapter is the jurisdiction of this
22 insurer, and this insurer shall in all things be bound by and shall
23 be subject to the awards, judgments and decrees rendered against
24 the insured (the employer) under this chapter.

25 (D) This insurer will promptly pay to the person entitled to the
26 same all benefits conferred by this chapter, including all
27 physician's fees, nurse's charges, hospital services, hospital
28 supplies, burial expenses, and all installments of compensation or
29 death benefits that may be awarded or agreed upon under this
30 chapter. The obligation of this insurer shall not be affected by any
31 default of the insured (the employer) after disablement or by any
32 default in giving of any notice required by this policy, or
33 otherwise. This policy is a direct promise by this insurer to the
34 person entitled to physician's fees, nurse's charges, fees for
35 hospital services, charges for hospital services, charges for
36 hospital supplies, charges for burial, compensation, or death
37 benefits, and shall be enforceable in the name of the person.

38 (E) Any termination of this policy by cancellation shall not be
39 effective as to employees of the insured covered hereby unless at
40 least thirty (30) days prior to the taking effect of such
41 cancellation, a written notice giving the date upon which such
42 termination is to become effective has been received by the

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1 worker's compensation board of Indiana at its office in
2 Indianapolis, Indiana.

3 (F) This policy shall automatically expire one (1) year from the
4 effective date of the policy, unless the policy covers a period of
5 three (3) years, in which event, it shall automatically expire three
6 (3) years from the effective date of the policy. The termination
7 either of a one (1) year or a three (3) year policy, is effective as to
8 the employees of the insured covered by the policy."

9 (g)(5) All claims for compensation, nurse's charges, hospital
10 services, hospital supplies, physician's fees, or burial expenses may be
11 made directly against either the employer or the insurer or both, and the
12 award of the worker's compensation board may be made against either
13 the employer or the insurer or both.

14 (g)(6) If any insurer shall fail to pay any final award or judgment
15 (except during the pendency of an appeal) rendered against it, or its
16 insured, or, if it shall fail to comply with this chapter, the worker's
17 compensation board shall revoke the approval of its policy forms, and
18 shall not accept any further proofs of insurance from it until it shall
19 have paid the award or judgment or complied with this chapter, and
20 shall have resubmitted its policy form and received the approval of the
21 policy by the industrial board.

22 (h) No policy of insurance covering the liability of an employer for
23 worker's compensation shall be construed to cover the liability of the
24 employer under this chapter for any occupational disease unless the
25 liability is expressly accepted by the insurance carrier issuing the
26 policy and is endorsed in that policy. The insurance or security in force
27 to cover compensation liability under this chapter shall be separate
28 from the insurance or security under IC 22-3-2 through IC 22-3-6. Any
29 insurance contract covering liability under either part of this article
30 need not cover any liability under the other.

31 (i) For the purpose of complying with subsection (c), groups of
32 employers are authorized to form mutual insurance associations or
33 reciprocal or interinsurance exchanges subject to any reasonable
34 conditions and restrictions fixed by the department of insurance. This
35 subsection does not apply to mutual insurance associations and
36 reciprocal or interinsurance exchanges formed and operating on or
37 before January 1, 1991, which shall continue to operate subject to the
38 provisions of this chapter and to such reasonable conditions and
39 restrictions as may be fixed by the worker's compensation board.

40 (j) Membership in a mutual insurance association or a reciprocal or
41 interinsurance exchange so proved, together with evidence of the
42 payment of premiums due, is evidence of compliance with subsection

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1 (c).

2 (k) Any person bound under the compensation provisions of this
3 chapter, contracting for the performance of any work exceeding one
4 thousand dollars (\$1,000) in value, in which the hazard of an
5 occupational disease exists, by a contractor subject to the compensation
6 provisions of this chapter without exacting from the contractor a
7 certificate from the worker's compensation board showing that the
8 contractor has complied with subsections (b), (c), and (d), shall be
9 liable to the same extent as the contractor for compensation, physician's
10 fees, hospital fees, nurse's charges, and burial expenses on account of
11 the injury or death of any employee of such contractor, due to
12 occupational disease arising out of and in the course of the
13 performance of the work covered by such contract.

14 (l) Any contractor who sublets any contract for the performance of
15 any work to a subcontractor subject to the compensation provisions of
16 this chapter, without obtaining a certificate from the worker's
17 compensation board showing that the subcontractor has complied with
18 subsections (b), (c), and (d), is liable to the same extent as the
19 subcontractor for the payment of compensation, physician's fees,
20 hospital fees, nurse's charges, and burial expense on account of the
21 injury or death of any employee of the subcontractor due to
22 occupational disease arising out of and in the course of the
23 performance of the work covered by the subcontract.

24 (m) A person paying compensation, physician's fees, hospital fees,
25 nurse's charges, or burial expenses, under subsection (k) or (l), may
26 recover the amount paid or to be paid from any person who would
27 otherwise have been liable for the payment thereof and may, in
28 addition, recover the litigation expenses and attorney's fees incurred in
29 the action before the worker's compensation board as well as the
30 litigation expenses and attorney's fees incurred in an action to collect
31 the compensation, medical expenses, and burial expenses.

32 (n) Every claim filed with the worker's compensation board under
33 this section shall be instituted against all parties liable for payment.
34 The worker's compensation board, in an award under subsection (k),
35 shall fix the order in which such parties shall be exhausted, beginning
36 with the immediate employer and, in an award under subsection (l),
37 shall determine whether the subcontractor has the financial ability to
38 pay the compensation and medical expenses when due and, if not, shall
39 order the contractor to pay the compensation and medical expenses.

40 SECTION 14. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
41 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2005]:

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Chapter 6. Employer Sales to Employees

Sec. 1. An employer may not sell to an employee of the employer:

(1) merchandise; or

(2) supplies;

at a price higher than the price at which the employer sells the merchandise or supplies for cash to another person who is not an employee of the employer.

Sec. 2. A person who violates section 1 of this chapter commits a Class C infraction.

SECTION 15. IC 22-2-4 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 16. [EFFECTIVE JULY 1, 2005] (a) IC 22-2-9-5, as amended by this act, applies to wage claims filed with the commissioner of labor after June 30, 2005.

(b) This SECTION expires January 1, 2006.

SECTION 17. [EFFECTIVE JULY 1, 2005] IC 5-16-7-1, as amended by this act, applies to projects for which a contract is awarded after June 30, 2005. IC 5-16-7-1, as in effect before July 1, 2005, applies to projects for which a contract was awarded before July 1, 2005.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 508, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 508 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 508 be amended to read as follows:

Page 2, line 15, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 2, line 15, delete "charitable, religious,".

Page 2, line 16, delete "educational, or other".

Page 2, line 16, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 2, line 17, delete "services." and insert **"services on a part-time basis."**

Page 2, line 18, delete "charitable, religious, educational, or other".

Page 2, line 19, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 2, line 20, delete "services." and insert **"services on a part-time basis."**

Page 3, line 10, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 3, line 10, delete "charitable, religious,".

Page 3, line 11, delete "educational, or other".

Page 3, line 11, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 3, line 12, delete "services." and insert **"services on a part-time basis."**

Page 3, line 41, delete "charitable, religious, educational, or other".

Page 3, line 42, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 4, line 1, delete "services." and insert **"services on a part-time basis."**

Page 5, line 21, delete "charitable, religious,".

Page 5, line 22, delete "educational, or other".

Page 5, line 22, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section**

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501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person".

Page 5, line 23, delete "services." and insert **"services on a part-time basis."**

Page 7, line 24, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 7, line 24, delete "charitable, religious,".

Page 7, line 25, delete "educational, or other".

Page 7, line 25, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 7, line 26, after "services" insert **"on a part-time basis"**.

Page 10, line 18, delete "contracts" and insert **"enters into an independent contractor agreement"**.

Page 10, line 18, delete "charitable, religious,".

Page 10, line 19, delete "educational, or other".

Page 10, line 19, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 10, line 20, delete "services." and insert **"services on a part-time basis."**

Page 10, line 21, delete "charitable, religious, educational, or other".

Page 10, line 22, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 10, line 23, delete "services." and insert **"services on a part-time basis."**

Page 11, line 39, delete "charitable,".

Page 11, line 40, delete "religious, educational, or other".

Page 11, line 40, delete "organization that".

Page 11, line 41, delete "contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 11, line 41, delete "services." and insert **"services on a part-time basis."**

Page 13, line 17, delete "contracts" and insert **"enters into an independent contractor agreement"**.

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Page 13, line 17, delete "charitable, religious,".

Page 13, line 18, delete "educational, or other".

Page 13, line 18, delete "organization" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))"**.

Page 13, line 19, after "services" insert **"on a part-time basis"**.

Page 16, line 20, delete "charitable, religious, educational, or other".

Page 16, line 21, delete "organization that contracts" and insert **"corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person"**.

Page 16, line 22, delete "services." and insert **"services on a part-time basis."**

(Reference is to SB 508 as printed February 11, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment and Labor, to which was referred Senate Bill 508, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new a paragraph and insert:

"SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Any firm, individual, partnership, limited liability company, or corporation that is awarded a contract by the state, a political subdivision, or a municipal corporation for the construction of a public work, and any subcontractor of the construction, shall pay for each class of work described in subsection (c)(1) on the project a scale of wages that may not be less than the common construction wage.

(b) For the purpose of ascertaining what the common construction wage is in the county, the awarding governmental agency, before advertising for the contract, shall set up a committee of five (5) persons as follows:

- (1) One (1) person representing labor, to be named by the president of the state federation of labor.
- (2) One (1) person representing industry, to be named by the awarding agency.
- (3) A third member to be named by the governor.
- (4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.
- (5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and determine in writing the following:

- (1) A classification of the labor to be employed in the performance of the contract for the project, divided into the following three (3) classes:
 - (A) Skilled labor.
 - (B) Semiskilled labor.
 - (C) Unskilled labor.
- (2) The wage per hour to be paid each of the classes.

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The committee is not required to consider information not presented to the committee at the meeting. IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) Notice of the committee's meeting shall be published:

(1) as required by IC 5-3-1; and

(2) on the Internet through the computer gateway administered by the intelnet commission under IC 5-21-2.

The notice given under subdivision (2) must be published not later than forty-eight (48) hours before the meeting. A determination made at a meeting held in violation of this subsection is void.

~~(d)~~ **(e)** The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the three (3) classes of wages described in subsection (c) that are currently being paid in the county where the project is located.

~~(e)~~ **(f)** The provisions of ~~(f)~~ This chapter ~~shall~~ **does** not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. IC 8-23-9 applies to state highway projects.

~~(f)~~ **(g)** A determination under subsection (c) shall be made and filed with the awarding agency at least two (2) weeks ~~prior to before~~ the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

~~(g)~~ **(h)** If the committee appointed under subsection (b) fails to act and to file a determination under subsection (c) ~~at or before the time required under by the deadline set forth in~~ subsection ~~(f); (g),~~ the awarding agency shall make the determination, and its finding shall be final.

~~(h)~~ **(i)** It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with the determination made under this section.

~~(i)~~ **(j)** The provisions of ~~(j)~~ This chapter ~~do~~ **does** not apply to public projects in ~~this state~~ **Indiana** that would otherwise be subject to ~~the provisions of~~ this chapter that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant ~~shall consent~~ **consents** in writing that ~~the provisions of~~ this chapter ~~are is~~ applicable to the project.

~~(j)~~ **(k)** Notwithstanding any other law, ~~the provisions of~~ this chapter ~~apply~~ **applies** to projects that will be:

(1) owned entirely; or

(2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

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~~(k)~~ (l) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs less than ~~one two~~ hundred fifty thousand dollars ~~(\$150,000)~~: **(\$250,000)**.

SECTION 2. IC 22-2-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. Any contract in violation of this subsection is void.

(b) Payment shall be made for all wages earned to a date not more than ten (10) **business** days prior to the date of payment. ~~However,~~ This subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeal any law providing for payments at shorter intervals. ~~However,~~ If an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) **business** days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

SECTION 3. IC 22-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

- (1) The assignment is:
 - (A) in writing;
 - (B) signed by the employee personally;
 - (C) by its terms revocable at any time by the employee upon written notice to the employer; and
 - (D) agreed to in writing by the employer.
- (2) An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.
- (3) The assignment is made for a purpose described in subsection (b).

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(b) A wage assignment under this section may be made for the purpose of paying any of the following:

- (1) Premium on a policy of insurance obtained for the employee by the employer.
- (2) Pledge or contribution of the employee to a charitable or nonprofit organization.
- (3) Purchase price of bonds or securities, issued or guaranteed by the United States.
- (4) Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been made.
- (5) Dues to become owing by the employee to a labor organization of which the employee is a member.
- (6) Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.
- (7) Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in section 4(c) of this chapter.
- (8) Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.
- (9) Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.
- (10) Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.
- (11) Premiums on policies of insurance and annuities purchased by the employee on the employee's life.
- (12) The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.

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(13) A judgment owed by the employee if the payment:

(A) is made in accordance with an agreement between the employee and the creditor; and

(B) is not a garnishment under IC 34-25-3.

(14) Payment for the purchase or maintenance of uniforms worn by the employee while performing duties for the employer.

(15) Payment for the purchase of tools and portable equipment used by the employee while performing duties for the employer.

SECTION 4. IC 22-2-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. **(a)** The commissioner of labor is hereby authorized to take assignments of wage claims of less than ~~eight hundred dollars (\$800.00)~~, **three thousand dollars (\$3,000)**, rights of action for penalties, mechanics and other liens of workers, without being bound by any of the technical rules with reference to the validity of such assignments; and shall have power and authority to prosecute actions for the collection of such claims of persons who, in the judgment of the commissioner:

(1) are entitled to the services of the commissioner; and ~~who, in his judgment,~~

(2) have claims which are valid and enforceable in the court.

(b) The commissioner shall have power to join various claimants in one (1) preferred claim or lien, and, in case of suit, to join them in one (1) cause of action."

Page 5, between lines 10 and 11, begin a new paragraph and insert: "SECTION 8. IC 22-3-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. In ~~all~~ cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~six~~ **seven thousand five hundred** dollars ~~(\$6,000)~~. **(\$7,500)**."

Page 5, line 11, delete "IC 22-3-6-1" and insert "IC 22-3-6-1, AS AMENDED BY HEA1288-2005, SECTION 182,".

Page 8, line 8, delete "IC 20-8.1-4-25," and insert "IC 20-33-3-35,".

Page 8, line 22, delete "IC 20-10.1-6-7" and insert "IC 20-37-2-7".

Page 9, line 24, delete "IC 20-10.1-6-7," and insert "IC 20-37-2-7,".

Page 16, between lines 39 and 40, begin a new paragraph and insert: "SECTION 12. IC 22-3-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. In ~~all~~ cases of the

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death of an employee from an occupational disease arising out of and in the course of the employee's employment under ~~such~~ circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~six~~ **seven** thousand **five hundred** dollars ~~(\$6,000)- (\$7,500)~~."

Page 22, after line 4, begin a new paragraph and insert:

"SECTION 14. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Employer Sales to Employees

Sec. 1. An employer may not sell to an employee of the employer:

- (1) merchandise; or
- (2) supplies;

at a price higher than the price at which the employer sells the merchandise or supplies for cash to another person who is not an employee of the employer.

Sec. 2. A person who violates section 1 of this chapter commits a Class C infraction.

SECTION 15. IC 22-2-4 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 16. [EFFECTIVE JULY 1, 2005] (a) **IC 22-2-9-5, as amended by this act, applies to wage claims filed with the commissioner of labor after June 30, 2005.**

(b) This SECTION expires January 1, 2006.

SECTION 17. [EFFECTIVE JULY 1, 2005] **IC 5-16-7-1, as amended by this act, applies to projects for which a contract is awarded after June 30, 2005. IC 5-16-7-1, as in effect before July 1, 2005, applies to projects for which a contract was awarded before July 1, 2005."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 508 as reprinted February 23, 2005.)

TORR, Chair

Committee Vote: yeas 6, nays 5.

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